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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

NORMAN GOLDSTEIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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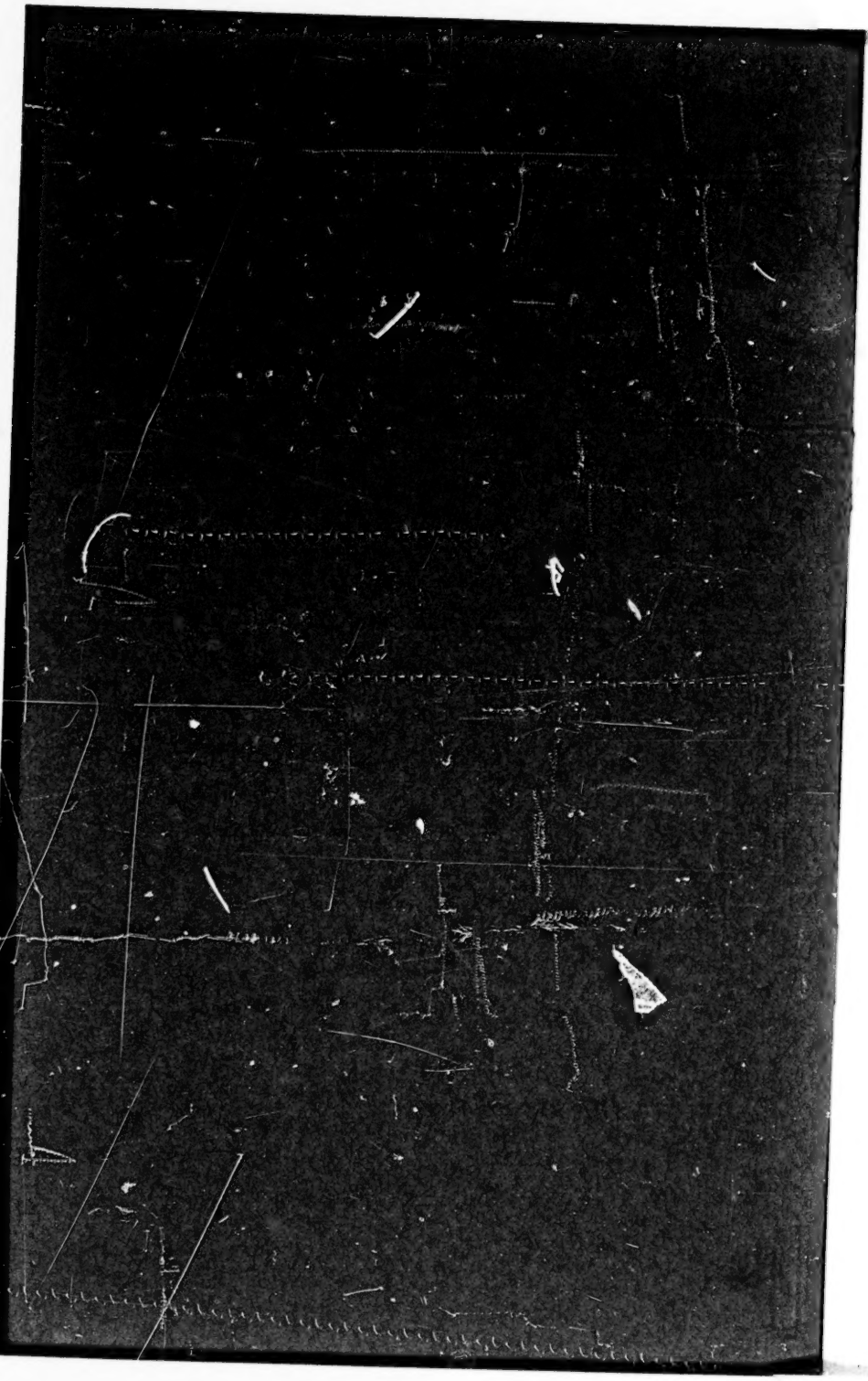

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BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App.) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on October 10, 1974. The petition for a writ of certiorari was filed on November 8, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence established the existence of a single integrated conspiracy of which petitioner was a member.

2. Whether the government's failure to provide petitioner with certain Jencks Act material constituted a failure to provide "material" evidence requiring a new trial.

STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, petitioner and ten co-defendants were convicted of conspiring to violate the federal narcotics laws in violation of 21 U.S.C. 846.[1] Petitioner was sentenced to imprisonment for eight years with three years special parole and $25,000 fine. In a lengthy opin-

[1] The indictment charged petitioner solely with conspiracy (count one). The substantive counts (counts three through eleven) charged other defendants with distribution, and possession with intent to distribute, of cocaine and heroin. Count two charged one co-defendant with engaging in a continuing criminal enterprise involving hard narcotics. In addition to the eleven co-defendants, the indictment named seventeen other defendants and six unindicted co-conspirators. Of these, judgments of acquittal were granted as to two; two pleaded guilty to the conspiracy count (count one) early in the trial; the cases against two were severed during the trial; eight defendants were unavailable for trial; and the jury acquitted three.

ion, on which we primarily rely, the court of appeals affirmed as to the petitioner (Pet. App.).[2]

The evidence, which is fully set forth in the opinion of the court of appeals, shows that from May 1, 1971, to mid April 1973, co-defendants Herbert Sperling and Vincent Pacelli, Jr. were the central figures of a large, well-organized and highly profitable organization which purchased, processed and resold hard narcotics (*i.e.*, heroin and cocaine) (Tr. 885, 888, 891-895, 898-899, 1424-1426, 1570-1571, 1584-1585, 1720-1723, 1742-1743, 1748-1758).[3] Each had at his command the services of others and the sources and outlets for narcotics. Petitioner was a participant in the Sperling branch of the conspiracy and he mixed and delivered narcotics at Sperling's directions (Tr. 1742-1745, 1747-1759). The evidence further showed that the activities of these two groups were closely intertwined.

1. Evidence concerning the activities of the Sperling branch of the conspiracy was adduced primarily through the testimony of defendant Joseph Conforti, a former member of the conspiracy who testified for the government, and of Cecile Mileto and Zelma Vance, whose testimony also corroborated Conforti's

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[2] The court of appeals also affirmed the conspiracy convictions as to five co-defendants but reversed as to the other co-defendants for reasons stated *infra*. The convictions on substantive counts three through ten were also reversed but those on counts two and eleven were affirmed.

[3] "Tr." refers to the trial transcript and "GX" to the government exhibits.

testimony. These witnesses established that thirteen of the defendants and two of the unindicted co-conspirators were participants in the narcotics operation directed by Sperling.[4] Co-conspirator Louis Mileto worked for Sperling (Tr. 1570-1571), stored "manita" [5] and "mix" at Joseph Conforti's service station (Tr. 1723-1725) and persuaded Conforti to store "mix" in a trunk in the basement of his house (Tr. 1725, 1728-1729). Eventually Mileto taught Conforti how to test and mix heroin (Tr. 1733-1739). The evidence concerning the "Sperling branch" of the conspiracy, and petitioner's participation in it, is briefly set forth below.

In February 1972, Mileto and Conforti went to Zelma Vance's apartment to mix approximately one kilo of heroin, which Mileto informed Conforti was for a special customer. Before leaving with the drugs Mileto ordered Conforti to remain there until he heard from him (Tr. 1739-1742). Mileto was shortly thereafter arrested together with Mark Rider and Paul Carter, after the deal the three had apparently negotiated turned out to be with an agent of the Bureau of Narcotics and Dangerous Drugs. The three were arrested moments after the drug transaction took place (Tr. 2137-2167).

Later that night Conforti telephoned Sperling to find out what happened to Mileto. Sperling told Con-

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[4] Conforti pleaded guilty to the conspiracy count (count one) early in the trial. He had stored, mixed and delivered hard narcotics for Sperling (Tr. 1720-1765, 1793-1837).

[5] "Manita" is used in cutting heroin.

forti that Mileto had been arrested and instructed Conforti to remove the narcotics from Zelma Vance's apartment and deliver them to "Sonny Gold," the petitioner. Conforti thereupon packed the narcotics, consisting of four kilos of pure heroin and eight half kilos of diluted heroin, into several bags and delivered them to petitioner Goldstein (Tr. 1742-1743).

On February 12, 1972 Conforti went to Ballantine's barbershop in New York City (the nerve center of the Sperling group's operation and which had became the focus of intensive police surveillance in July 1971), where he met Sperling and petitioner. At Sperling's instruction, Conforti, accompanied by petitioner, went to a hotel, where they had relocated the mix and paraphernalia, and placed them back in petitioner's automobile (Tr. 1744-1745).

In the spring of 1972 Conforti began processing narcotics directly under Sperling's supervision. On the first occasion, Conforti registered at the Bar Harbor Motel in Massapequa Park, Long Island, on Sperling's instruction. He then returned to Sperling's home in Bellmore, Long Island, picked up manita from Sperling, and brought it back to the motel. Later in the afternoon petitioner arrived with either a half kilo or kilo of pure heroin which Conforti then mixed with the manita. After packaging and sealing the diluted heroin in plastic bags and cleaning the motel room, Conforti drove with petitioner to Sperling's home where Conforti was dropped off (Tr. 1747-1750).

Conforti and petitioner mixed quantities of pure heroin ranging in size from one half to one kilo for Sperling on March 8 and 31, 1972 at the Bar Harbor Motel and on June 9, 1972 at the nearby Gateway Motel (Tr. 1750-1753; GX 26, 27).

In September 1972 Conforti met defendant Edward Schworak,[6] who, together with petitioner, assisted Conforti in mixing heroin for Sperling at the Bar Harbor and Gateway Motels on seven occasions during September, 1972. Conforti testified that Sperling would deliver the manita to him at a pizza store in Bellmore which he and Sperling owned. In the evening he with Schworak and petitioner would bring the heroin to the pizza store, and the three of them would then drive to the motel where Conforti would mix the heroin with the manita while Schworak and petitioner remained in the room. On each occasion Conforti diluted two and a half kilos of pure heroin to yield twelve to fourteen half kilo packages (Tr. 1753-1758; GX 28, 29).

Between November 1972 and April 14, 1973, the day when Conforti was arrested, defendant Spada[7] and Conforti, occasionally assisted by petitioner, mixed heroin for Sperling on more than fifteen occasions at the Gateway and Bar Harbor Motels on Long

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[6] Photographs taken at Ballantine's barbershop showed Schworak meeting: (1) with Sperling, petitioner and Mallah on August 16, 1972; (2) with petitioner on September 6, 1972; and (3) with Spada and petitioner on October 4, 1972 (GX 53, 59).

[7] Spada was also unavailable for trial.

Island and at the Skyline Motor Inn in Manhattan, as well as at an apartment located on 54th Street which was maintained for that purpose. The amount of pure heroin mixed on each of these occasions varied from one half to three kilos (Tr. 1796-1797).[8] Spada would deliver the "mix" to Conforti, who would then bring it to the place where the narcotics were to be processed. Later Spada would bring the pure heroin, and Conforti would dilute and package the drugs, which were then taken by Spada for delivery.

On January 10, 1973 at about 2:00 P.M. Conforti and petitioner met at Seventh Avenue and 54th Street, where petitioner instructed Conforti to buy some sandwiches and coffee and deliver them to Sperling at an apartment located at 55th Street and Eighth Avenue. Conforti went to the apartment where he found Sperling. Shortly after Sperling finished eating, Spada arrived. Sperling then mentioned that he had to meet someone and opened a black attache case filled with $50 and $100 bills, a quantity of which he removed and placed in his pocket. All three left the apartment together and drove to 54th Street and Seventh Avenue where they met petitioner, who spoke briefly with Sperling and Spada (Tr. 1793-1795).

In total, government witnesses described approximately 69 meetings, conversations, drug sales or

[8] Petitioner rented a room at the Skyline Motor Inn on 18 different occasions during the period from December, 1971 through December, 1972 (Tr. 1706-1708; GX 30A).

transfers, beginning in early 1971 and continuing through April 1973, involving members of the Sperling group.

2. Evidence concerning the Pacelli branch of the conspiracy was adduced primarily through the testimony of Barry Lipsky, a government witness who was a former participant in the Pacelli operation (Tr. 880). His testimony, which partially was corroborated by other evidence,[9] was that fifteen of the defendants and four of the unindicted co-conspirators were participants in the narcotics operations headed by Pacelli. The evidence showed that Pacelli received cocaine in kilo or multikilo quantities from defendant Juan Serrano (Tr. 925-928, 968-969). He also received heroin in multikilo quantities from defendants Bless (Tr. 936-939, 955-958) and Sperling (Tr. 961-966, 972-975). He sold cocaine in kilo and multikilo quantities to Bless (Tr. 939-943), defendant Berger (Tr. 929-930), Sperling (Tr. 902-906, 909, 966-971), defendants Bassi (Tr. 910-915) and Valentine (Tr. 946-949). In all, government witnesses described approximately 47 meetings, conver-

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[9] In addition to Lipsky's testimony there was accomplice testimony by defendant Contorti (Tr. 1718-1765, 1793-2011) and defendant Susan Weyl, who also pleaded guilty to the conspiracy count (count one) early in the trial (Tr. 1421-1450). There was also testimony by Jack Finkelstein, who had drug transactions with Lipsky and Bless (Tr. 2722-2791); Cecile Mileto (Tr. 1565-1674); and Zelma Vance (Tr. 2118-2136). Police officers also testified regarding their visual surveillance, and photographs and court-authorized intercepted conversations were received in evidence.

sations and drug sales or transfers beginning in May 1971 and continuing through December 1971 involving members of the Pacelli group.

3. The evidence further showed that Sperling sold heroin in multikilo quantities to defendant Pacelli (Tr. 961-966, 972-975) and that Sperling purchased cocaine in kilo and multikilo quantities from Pacelli (Tr. 902-906, 909, 966-971).

As noted earlier, Ballantine's barbershop in Manhattan, New York, was the nerve center of the Sperling group's operation and became the focus of intensive police surveillance. The surveillance, which occurred from July 1971 through late 1972, employed a variety of visual, photographic and electronic techniques in gathering voluminous evidence of the conspiracy's operation during 1971 and 1972. Photographs taken by police during July 1971, which showed numerous meetings among the conspirators in the vicinity of Ballantine's barbershop, were admitted into evidence. Noteworthy among those were meetings of Pacelli, Sperling and Mileto on July 16, 1971 (GX 47); Sperling, Guarino and Mileto on July 21, 1971 (GX 48); and Sperling, co-defendant Mallah (Sperling's partner) and petitioner on July 26, 1971 (GX 50) (Tr. 2299-2314). There were also photographs showing meetings among these and other conspirators from August 1971 to October 1972 (Tr. 2307; GX 53-67D).

Of the numerous meetings which the police observed, one on May 8, 1972 reveals the close association between members of the Pacelli and Sperling

groups. Sperling was observed in conversation with defendant "Abby" Perez (Pacelli's partner, Tr. 888) in front of Ballantine's barbershop, while co-conspirator Carlo Lombardi (of the Sperling branch) and defendant Edgardo Ramirez (of the Pacelli group) stood on a nearby corner. Sperling motioned to Lombardi, who came over and spoke to Sperling. Sperling then returned to Perez, who proceeded to look at a small notebook which he removed from his pocket. Then Perez entered the bar next to the barbershop. Upon leaving the bar, Perez again spoke to Sperling, who motioned to Lombardi and Ramirez to join him. All four talked in front of the barbershop. After Perez shook hands with Sperling, Lombardi and Ramirez entered Lombardi's car and left. Sperling and Perez then entered the bar. Photographs of this meeting were introduced in evidence (Tr. 2520-2522; GX 96, 97).

Police also overheard incriminating conversations between Sperling and defendant Mallah and between petitioner and Sperling linking the defendants to the overall conspiracy. On September 12, 1972 court-authorized electronic surveillance of Sperling, petitioner, Mallah and their co-conspirators in the vicinity of Ballantine's barbershop began, and evidence derived therefrom was introduced at trial (Tr. 2338-2339; GX 68, GX 69).

ARGUMENT

1. Petitioner's contention that the evidence at trial established separate and multiple conspiracies rather

than a single conspiracy as charged in the indictment is unsupported by the record. The court of appeals, viewing the evidence in the light most favorable to the government, *Glasser* v. *United States*, 315 U.S. 60, 80; *United States* v. *McCarthy*, 473 F.2d 300, 302 (C.A. 2), held that it clearly established the existence of one large conspiracy to process and distribute enormous amounts of heroin and cocaine for profit, *United States* v. *Guanti*, 421 F.2d 792, 801 (C.A. 2), certiorari denied, 400 U.S. 832; *United States* v. *Agueci*, 310 F.2d 817, 826 (C.A. 2), certiorari denied, 372 U.S. 959. The evidence established that the defendants were participants in what is commonly described as a "chain conspiracy." [10] See, *Blumenthal* v. *United States*, 332 U.S. 539; *United States* v. *Agueci*, *supra*, 310 F.2d at 826.

There was abundant evidence that Pacelli and Sperling joined together and intermingled their activities in an integrated combination to purchase and sell large quantities of heroin and cocaine at a profit, *United States* v. *Bynum*, 485 F.2d 490, 495 (C.A. 2), vacated and remanded on other grounds, 417 U.S.

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[10] The pattern in a large-scale drug "chain conspiracy" is typical. Raw drugs in large quantities have to be imported and supplied. The core operators supply the capital and contacts. The raw drugs then have to be adulterated or cut, packaged and then resold to purchasers who eventually make them available to the ultimate user. Each level of the operation depends upon the existence of the other, and mutual interdependence of each is fully understood. See *United States* v. *Bynum*, 485 F.2d 490, 495 (C.A. 2), vacated and remanded on other grounds, 417 U.S. 903.

903. Sperling and his partner, Ben Mallah, and Pacelli and his partners, Albert Perez and Al Bracer, were the core partners or operators (Tr. 880-888, 1570-1571, 1742-1745, 1747-1759, 2299-2314, 2520-2522; GX 47, 48, 96, 97). In addition to four specific multikilogram narcotics transactions between Sperling and Pacelli [11] (Tr. 902-906, 961-966, 966-971, 972-975), Sperling admitted in his testimony that he had met with Pacelli on 35 to 40 different occasions (Tr. 2954-2955). Pacelli likewise testified that he met frequently with Sperling, including once at Sperling's Spring Street apartment (Tr. 3606-3608, 3616). Pacelli also admitted knowing Mileto and petitioner, two of Sperling's workers (Tr. 3615-3616).

The substantial trial testimony, which was corroborated by visual surveillance showing various meetings among the members of the conspiracy, particularly of members of both groups (Tr. 2299-2314, 2520-2522; GX 47, 48, 96, 97), amply proved an integrated and continuing conspiracy between the Pacelli and Sperling groups. *United States* v. *Sisca*, 503 F.2d 1337, 1345 (C.A. 2). Each of the two groups acted as the customer and supplier of the other, and each was dependent on the other for the

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[11] Pacelli and Sperling both dealt in heroin and cocaine. The success of their activities depended upon their continued ability to satisfy the needs of their customers for both drugs. Pacelli, with his good cocaine connections, was able to supply cocaine to Sperling, and Sperling with his good heroin connections, could provide Pacelli with heroin.

success of the illegal business. *United States* v. *Bynum, supra,* 485 F.2d at 495-496.

Petitioner, a narcotics worker for Sperling, served directly under the latter's supervision and worked on a regular basis with Conforti, Mileto, Schworak and Spada in connection with the delivery and processing of narcotics (Tr. 1742-1745, 1747-1759; GX 50, 53, 59). Petitioner cannot reasonably disclaim knowledge of and participation in such a large scale, general scheme designed to place narcotics in the hands of the ultimate users. *United States* v. *Arroyo,* 494 F. 2d 1316, 1319 (C.A. 2), certiorari denied, October 15, 1974 (Nos. 73-1574, 73-6610, 73-6913); *United States* v. *Rich,* 262 F.2d 415, 418 (C.A. 2). As the court of appeals noted (Pet. App. 42):

> The fact that not each of the conspirators was acquainted with each of the others is of no significance, since "there is evidence that each was aware of others in the line of distribution and of the larger nature of the operation in which he * * * played a part." *United States* v. *Calabro,* 467 F.2d 973, 982-83 (2 Cir. 1972), *cert. denied,* 410 U.S. 926 (1973). See *United States* v. *Sisca* [*supra,* 503 F.2d at 1345]; *United States* v. *Bynum, supra,* 485 F.2d at 496.

The mere fact that certain members of a conspiracy deal recurrently with only one or two others does not establish that they were not participants in a single conspiracy. *United States* v. *Vega,* 453 F.2d 1234, 1236 (C.A. 2), certiorari denied *sub nom. Guridi* v.

United States, 410 U.S. 982; see also *Blumenthal* v. *United States*, *supra*.

At all events, as the court of appeals further noted (Pet. App. 44), assuming *arguendo* that the evidence did show more than one conspiracy, "there was no prejudice to appellants sufficient to warrant reversal." *United States* v. *Agueci*, *supra*, at 827. See, *United States* v. *Calabro*, 467 F.2d 973, 983 (C.A. 2), certiorari denied, 410 U.S. 926. The test for reversible error if more than one conspiracy is proved is whether the variance affects substantial rights. The material inquiry is not the existence but the prejudicial effect of the variance. Here there is no problem of double jeopardy or unfair surprise deriving from the proof of more than one conspiracy. In those circumstances, there is no reversible error when the several conspiracies could have been joined in a single trial and any possible prejudice resulting from the admission of evidence not directed against any particular defendant was minimal. *United States* v. *Agueci*, *supra*, 310 F.2d at 827. That was the case here.[12]

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[12] This case accordingly is unlike *Kotteakos* v. *United States*, 328 U.S. 750, where numerous individuals, unconnected and unconcerned with one another, were tied solely to each one's involvement with one person. We rely on the court of appeals' opinion wherein the court stated (Pet. App. 44) that the judge "properly marshalled the evidence; explained in detail the essential elements of the crime of conspiracy and the scope of his agreement; and specifically charged that if the government 'has failed to prove the existence of only one conspiracy, you must find the defendants

The related claim that the evidence was insufficient to support the jury's verdict that petitioner was a member of any conspiracy (Pet. 2) is insubstantial. A jury verdict must be sustained if there is substantial evidence, taking the view most favorable to the government, to support it. *Glasser* v. *United States*, *supra*, 315 U.S. at 80. See *United States* v. *McCarthy*, *supra*, at 302; *United States* v. *Miller*, 460 F.2d 582, 588-589 (C.A. 10). The court of appeals in the present case (Pet. App. 46) held that petitioner's claim of insufficient evidence was "frivolous," noting that there was overwhelming proof that petitioner was deeply involved in this large scale narcotics conspiracy and was well aware of its scope. See *United States* v. *Arroyo*, *supra*, 494 F.2d at 1319; *United States* v. *Bynum*, *supra*, 485 F.2d at 496-497, 498-499. As we have shown in the Statement, *supra*, this assessment of petitioner's participation was correct.

As a member of the Sperling branch of the conspiracy, petitioner mixed and delivered narcotics at Sperling's directions (Tr. 1742-1745, 1747-1759). After Mileto had been arrested, Conforti delivered four kilos of pure heroin and eight half kilos of diluted heroin to petitioner (Tr. 1742-1743). Later, both Conforti and petitioner placed "mix" and paraphernalia back in petitioner's car (Tr. 1744-1745).

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not guilty.' This instruction was proper—'indeed, if anything, more favorable to appellants than that to which they were entitled.'" See *United States* v. *Sisca*, *supra*; *United States* v. *Calabro*, 449 F.2d 885, 893-894 (C.A. 2), certiorari denied, 405 U.S. 928.

The evidence shows that from the spring of 1972 through April, 1973, petitioner brought substantial amounts of heroin to designated motels, where petitioner, Conforti and others mixed it. Upon completion petitioner would usually leave with the heroin (Tr. 1747-1750, 1750-1753, 1753-1758, 1796-1797; GX 26, 28, 29). Further, the police surveillance at Ballantine's barbershop resulted in photographs and a court-authorized overheard conversation showing petitioner meeting with various members of the conspiracy (GX 50, 53, 59; Tr. 2336-2337), as well as testimony by the police that petitioner was observed wearing surgical gloves when he received a box from Mileto (Tr. 2393).

2. Petitioner's final contention is that the government's failure to furnish him with Jencks Act material deprived him of a fair trial. The material in issue is a letter that the principal witness in the case, Barry Lipsky, had written to Assistant United States Attorney Feffer on December 6, 1972 (the Lipsky-Feffer letter). The essence of the letter was that Lipsky thanked Feffer for some of the privileges he had arranged, asked for further favors, and discussed the status of the state murder case pending against Lipsky.

Lipsky had provided much of the evidence concerning the Sperling-Pacelli narcotics conspiracy. Beginning in April, 1971 and continuing until February, 1972, he was Pacelli's chief assistant in the latter's narcotics business (Tr. 880). He received the narcotics purchased by Pacelli; he stored, tested,

diluted and repackaged them for distribution; and he delivered them to Pacelli's customers. He was also present with Pacelli during various narcotics transactions (Tr. 878-1413).

During the trial of the instant case the government on four separate occasions represented that a search of its files indicated that all of Lipsky's material producible under 18 U.S.C. 3500 had been produced. However, several months after imposition of sentences, the government produced for the first time the Lipsky-Feffer letter. The petitioner, and all of the other ten appellants in the instant case, claimed on appeal that the government's failure to produce this letter for use at the trial precluded them from adequately cross-examining Lipsky, thus denying them their Sixth Amendment right of confrontation and, consequently, a fair trial.

The court of appeals held (Pet. App. 26) that the Jencks Act required the government to produce the Lipsky-Feffer letter for use on cross-examination. Because the government failed to provide the letter, the court of appeals analyzed it to determine its potential usefulness in cross-examination of Lipsky by each defendant, in view of the nature and quantum of evidence against each. On that basis, the court, after carefully reviewing the evidence against each appellant, reversed the conspiracy convictions (count

one) as to three appellants, but affirmed as to eight, including petitioner.[13]

With respect to the petitioner, the court of appeals held (Pet. App. 40) that "there was no significant chance that the Lipsky-Feffer letter, had it been available, 'could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction.'" *United States* v. *Miller*, 411 F.2d 825, 832 (C.A. 2). The court so concluded after noting (Pet. App. 32) that virtually all of the evidence of the petitioner's participation in the overall narcotics enterprise was adduced through the testimony of Conforti, Mileto and Vance, and not Lipsky, and that their testimony was corroborated by electronic and visual surveillance, all detailed extensively, *supra* (Tr. 1742-1745, 1747-1759, 1796-1797, 2336-2337, 2393; GX 26, 28, 29, 50, 53, 54).[14]

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[13] As to two appellants the court reversed the conspiracy conviction on the ground there was insufficient evidence linking them to the overall conspiracy.

[14] The court of appeals distinguished the government's failure to furnish Jencks material from a similar failure in *United States* v. *Pacelli*, 491 F.2d 1108 (C.A. 2). In *Pacelli*, Lipsky was again the principal government witness, testifying against many of the same parties involved here, and the government had failed, as here, to furnish a similar but different letter Lipsky had written to another Assistant United States Attorney. In *Pacelli*, this court of appeals reversed the convictions, holding that denial of the opportunity to use such forceful impeaching material bearing on the credibility of the government's key witness mandated a new trial.

In distinguishing the present case from *Pacelli*, the court of appeals noted that in this case, as contrasted with *Pacelli*, other accomplice witnesses also testified and this accomplice

The government's failure to turn over requested material to the defense does not automatically compel a new trial. The defendant must also show that the evidence sought was material. *Giglio* v. *United States*, 405 U.S. 150, 154; *Brady* v. *Maryland*, 373 U.S. 83, 87. A new trial is not required "whenever 'a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict * * *' ", *Giglio* v. *United States*, *supra*, at 154. See also *United States* v. *Pfingst*, 490 F.2d 262, 277; *United States* v. *Keogh*, 391 F.2d 138, 148 (C.A. 2).

Where nondisclosure has been inadvertent rather than willful, as here—and petitioner does not contend otherwise—the Second Circuit's standard of materiality requires that there be "a significant chance that this added item, developed by skilled counsel as it would have been, could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction." *United States* v. *Pfingst*, *supra*, at 277; *United States* v. *Kahn*, 472 F.2d 272, 287 (C.A. 2), certiorari denied, 411 U.S. 982; *United States* v. *Miller*, *supra*, at 832. This view accords with this Court's rulings in *Giglio* and related cases.

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testimony was corroborated by an abundance of other independent evidence, including documents, seized drugs, photographs, a tape recording, the results of police surveillance and an undercover investigation, and the testimony of many disinterested witnesses. Furthermore, the court noted that Lipsky's testimony itself was corroborated here with far more precision than it had been at the *Pacelli* trial (Pet. App. 30).

In this case the court of appeals correctly applied this standard to affirm petitioner's conviction. In light of the testimony of Conforti, Mileto and Vance and in view of the electronic and visual surveillance, the Lipsky-Feffer letter was not "material" on the question of guilt or innocence of the petitioner. As far as petitioner is concerned, the failure to produce this letter was harmless beyond a reasonable doubt.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
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